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DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1984

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

THE OVERSIGHT OF THE DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1984

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DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1984

THURSDAY, MARCH 24, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter and DeConcini.

Staff present: Vinton D. Lide, chief counsel and staff director; and Deborah K. Owen, general counsel.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

The committee is pleased this morning to hear from the Honorable William French Smith, Attorney General of the United States, on the administration's budget authority request for fiscal year 1984.

In compliance with the Congressional Budget Act, prior to May 15, this committee will report legislation to the Senate authorizing appropriations for, and activities of, our Nation's chief law enforcement mechanism—the Department of Justice. With this goal in mind, our various subcommittees are in the process of holding oversight hearings on the fiscal year 1984 needs of individual divisions and offices within their respective jurisdictions. The views provided by the Attorney General this morning will give us a general perspective on the Department's overall priorities which will be of great assistance in crafting the legislation which we will ultimately report.

In a recent appearance before this committee, the Attorney General advised us of the administration's plans for fighting organized crime and drug trafficking with supplemental appropriations which it requested and received at the end of the last Congress. I am pleased to hear that the Attorney General has more good news of this nature for us this morning. While the need for diligence in limiting Federal Government spending and reducing deficits is clear, we must insure that adequate, but well-targeted, resources are available for our Federal law enforcement agencies.

As the Attorney General has so wisely noted on other occasions, additional funds for law enforcement will not have the desired impact if certain defects in the Federal criminal law remain uncured. Last week, at the administration's request, I was pleased to

introduce, along with the distinguished chairman of the Criminal Law Subcommittee, Senator Paul Laxalt, the Comprehensive Crime Control Act of 1983. This package contains many long-overdue changes in Federal criminal law, such as bail and sentencing reform, which are essential tools in the war against crime. I look forward to working with Senator Laxalt, the administration, and the ranking minority member of this committee so that we can enact these important changes without further delay.

This committee has again undertaken the monumental and imperative task of revising our Nation's immigration laws. As in the last Congress, we look forward to working closely with the Department to insure that our final product is a fair and workable one. In this connection, we will be most interested to hear about the administration's need for additional resources in coping with our current immigration problems and in implementing the major revision which is under consideration.

Finally, this committee notes with strong concern recent terrorist incidents which our Nation has suffered. We must not relax our efforts to protect innocent citizens from the gratuitous infliction of injury to life and property by those bent upon undermining our freedoms. We are most interested in any proposals that the Department may have in dealing with this problem.

The committee on the Judiciary is mindful of its important responsibility to provide the authority necessary for effective operations of the Department of Justice at minimal expense to the taxpayers. We are hopeful that the interests of all parties can be accommodated so that an authorization bill for fiscal year 1984 can be enacted in a timely manner. Of course, the first step in that process will be the introduction of the administration's bill, which I understand we can expect to receive in the very near future.

Mr. Attorney General, again, I am pleased to welcome you this morning.

First I wish to see if Senator Specter has any opening remarks.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

I would just like to assure the Attorney General that I am not following him. He was before the Appropriations Subcommittee yesterday, and my presence there yesterday and here today is because of my very deep concern over these issues. I am glad that I have an opportunity to be of assistance in the appropriations process, as well as the authorizing process. So I just want to give that assurance. I was the sole member besides the chairman at the hearing yesterday for any length of time, although Senator Rudman was there, and Senator Chiles. But I just wanted to give the Attorney General that assurance.

The CHAIRMAN. Attorney General, you may proceed.

STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Attorney General SMITH. It is a great pleasure for me to be here as the first Attorney General in many years to request significant increases in the resources available to Federal Law enforcement.

The budget under consideration by this committee provides for the first time funding of more than $3 billion for the Department of Justice and more than $1 billion for the Federal Bureau of Investigation.

Although I appear before you to discuss our next budget, that budget can be fully understood only in the context of what has come before. This budget seeks a substantial increase in our resources—especially to combat organized crime and drug trafficking—and it builds upon previous accomplishments made despite more limited resources.

We have brought greater coordination to law enforcement at all levels of government by establishing Law Enforcement Coordinating Committees composed of Federal, State, and local law enforcement officials in Federal judicial districts throughout the country.

For the first time, we have brought the FBI into the fight against drug trafficking to assist the Drug Enforcement Administration. There have been more than 1,100 drug investigations involving the FBI, roughly one-third of which have been joint investigations with DEA.

We have indicated and convicted many of the leaders of organized crime considered untouchable by many just a few years ago. In fact, some 350 members and associates of traditional organized crime families have been convicted over the last 2 years. Another 300 are awaiting trial.

Building upon the coordination exhibited by the South Florida Task Force, 12 new regional task forces to combat organized drug trafficking are becoming operational and have begun work on their firs cases.

We have worked with the Congress in assembling one of the most significant packages of proposed criminal law reforms in our Nation's recent history.

We have also worked with the Congress in drafting the most important proposed reform of our Nation's immigration laws in decades—and have improved the effectiveness of the Immigration and Naturalization Service while awaiting passage of the kinds of reforms necessary to regain control of our borders.

We have vigorously enforced our civil rights laws—and brought more criminal cases than any prior administration during a comparable period of time.

We have brought antitrust enforcement back to the real economic world to punish and deter truly anticompetitive activity. We filed more criminal cases in fiscal 1982, for example, than any prior administration did 1 year—more than three times the average for each year in the last decade.

We have launched a major civil litigation effort to protect the Public Treasury against fraud and abuse—and have collected more than $200 million owed to the Government in the last fiscal year alone.

These are merely a few of the significant accomplishments of the past. The fiscal year 1984 budget envisions many more accomplishments—and requests the new funding needed to make them a reality. Our previous efforts have benefited in many instances from the advice and support of the Congress—and our future endeavors

will also need the same kind of mutual understanding and assistance.

Mr. Chairman, I am requesting today a budget of $3.4 billion for 55,431 positions and 58,249 full-time equivalent work years. That is an increase of 1,346 full-time equivalent work years over the number allocated to the Department in fiscal year 1983. And the dollar amount of the budget represents a 15.3-percent increase over the amount of budget authority expected for the current fiscal year.

Department officials have been and will continue to appear before you to answer specific questions you may have concerning programs under their direction. At this time, I would like to dwell on the most notable feature of this budget—its request for resources to deal effectively with crime.

This budget provides funding for our attack on drug-related crime, for extensive new prison and jail construction, and for the large-scale application of modern technology to the Federal justice system. The budget reflects our considered approach of applying resources in a balanced manner across the justice system. Our approach recognizes and supports the interrelationship of the various components of the system, which include investigations, prosecution, corrections and prisons, and Federal assistance to States and localities.

Let me briefly discuss the problems we have identified in the fight against crime and how we propose in this budget to deal with them.

First, this budget addresses the need for investigators. The budget continues funding for 760 Department of Justice investigative staff who will be participating in regional drug task forces with funding provided also for an additional 500 investigators and support staff in the appropriations for the Department of the Treasury.

Second, this budget addresses the need for more prosecutors. The budget completely funds the 340 prosecutorial staff, on the regional drug task forces. These 340 prosecutorial staff together with the 1,260 investigative staff in the Departments of Justice and Treasury, reflect the President's decision to commit a staff of 1,600 persons to fight against drug-related crime. The budget also continues funding the 78 positions obtained last fall for the south Florida drug task force.

Third, this budget addresses the shortage of space available for incarcerating Federal prisoners. Federal prisons already are overcrowded; they have 23 percent more inmates than their rated bedspace can hold. The problem of insufficient space doubtless will be exacerbated as we increase our investigative and prosecutorial efforts.

Our budget request contains $96 million for new Federal prison capacity. It requests funds for construction of one 500-bed Federal correctional institution in the Northeastern United States. It asks for planning and site acquisition funds for a second 500-bed FCI in the Northeast, construction of a 500-bed Metropolitan Correctional Center in Los Angeles, an additional 340 bedspaces at existing Federal facilities—780 such bedspaces were funded in 1983—and funds for a number of modernization and rehabilitation projects through-

out the Federal prison system. The budget includes also an additional $6 million for contract community treatment centers that would hold eligible Federal prisoners nearing their time for release.

The $96 million requested here builds on the $57 million provided for prison construction last fall through a 1982 supplemental appropriation and the 1983 budget amendment requested by the President.

Fourth, this budget addresses the need for more space for Federal prisoners who have yet to be sentenced. It is best if unsentenced Federal prisoners can be kept in facilities located relatively close to Federal courts.

The budget also requests an additional $10.5 million for the support of the U.S. prisoners program. This represents a 31-percent increase over last year. An additional $10 million is provided through the organized crime drug enforcement initiative for the Marshals Service's cooperative agreement program (CAP). The latter goes beyond the $5 million provided for CAP in the 1983 organized crime drug enforcement initiative.

The CAP effort provides State and local detention facilities with funds for equipment, remodeling, and, in some cases, construction of more bedspace. This construction takes place upon agreement that a number of bedspaces in local jails will be available for housing Federal prisoners in the custody of the Marshals Service. The CAP effort is critical to reopening the dozens of local facilities that in the past 5 years have quit offering space, or else offered much less space, for housing Federal prisoners.

Fifth, this budget addresses the need for improved technology for the Federal justice system. It includes more than $175 million in new funding for automatic data processing, data telecommunications, voice privacy radio systems, litigation support systems, and office automation for Justice investigative, prosecutive, and litigative activities. This money specifically will assist the FBI, DEA, and the Immigration and Naturalization Service as each enhance its automatic data processing capability. In addition, the funds will facilitate completion of the FBI's Automated Identification Division system. This system will enable us to identify, within 24 hours, fingerprints taken in criminal investigations. As for the voice privacy radio system, it will enable agents in the street to communicate more effectively and securely with one another.

Sixth, this budget addresses the need to support worthy State and local assistance initiatives. Soon we will be forwarding legislation on this matter. The bulk of the $90 million we will seek would match dollar for dollar truly effective State and local criminal justice efforts.

Seventh, this budget seeks to improve recordkeeping by the INS. It includes $10 million as a request for establishment of an INS National Records Center. Inasmuch as INS will be converting to automatic data processing, thanks in part to the $17 million included in the general request for improved technology that I mentioned earlier, the new Center should enable INS to maintain a more accountable and up-to-date records system.

Eighth, this budget addresses the need for an increased foreign counterintelligence capability. We seek more support both for staff

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and operations in the FBI's foreign counterintelligence program. The budget adopts recommendations made by the Director of Central Intelligence to improve the FBI's ability to deal with known and suspected hostile foreign intelligence agents operating within the United States. The budget also recognizes the need for additional FBI staff to counter the intense efforts by hostile foreign intelligence services to gain access to sensitive American technology.

Last, the budget addresses the need for personnel in key areas by including funds for more than 500 new positions. These are in addition to the positions that will be funded through the organized crime drug enforcement initiative and the FBI's foreign counterintelligence program.

Of these 500 new positions, 185 would be allocated to the FBI. Some 160 of these individuals would implement the Bureau's voice privacy and ADP initiatives. Another 25 would be assigned to a hostage rescue team based in the FBI's Washington, D.C., field office.

Thirty-five other positions would go to the Drug Enforcement Administration. The new positions would be used in the DEA's foreign cooperative investigations, laboratory, ADP, and technical field support programs.

Another 212 positions will be created within the Federal prison system, the majority in its medical services program. And 31 individuals would be added to the U.S. Marshals Service to provide additional court security under an agreement we reached with the Chief Justice last spring.

The remaining 37 new employees would work in the areas of prosecution and litigation. The Civil Rights Division would have 15 new staff members who are needed to assist our prosecution of criminal civil rights violations and handle the increased workload expected as a result of the 1982 extension and amendment of the Voting Rights Act. The U.S. attorneys would be given 32 new positions mainly to help in civil litigation. The administration plans to maintain the size of the prosecutive staff added by the Congress in 1983 to the U.S. Attorney's Office for the District of Columbia.

The budget does not include funding for juvenile justice grants, State and local drug grants, and the service of private process program in the U.S. Marshals Service. These reductions would save almost $85 million. The proposed termination regarding the private process program builds upon Public Law 97-462, signed January 12, 1983, which had already effectively minimized the Marshals Service role in that area.

Another proposed reduction would save $10 million in the INS detention and deportation program. In 1982 Congress funded the operation of the Fort Allen, P.R., Service Processing Center, which was activated for the Haitian detention effort. Since there is no need for Fort Allen, the funds for its operation can also be eliminated.

Mr. Chairman, I believe our programs promise a highly effective attack on all forms of crime, but especially drug related and organized crime. This budget will require substantial new expenditures, but the total cost will probably be less than what is spent in 1 week on illegal drugs in this country. Indeed, it will be less than what is spent in 1 week on many Federal programs.

On a number of occasions, the President has stated that his commitment to the war on crime, especially in drug trafficking, is unshakable. I share that unshakable commitment. We intend to do what is necessary to end the drug menace and cripple organized crime. This budget will help accomplish just that. It is a comprehensive and carefully crafted budget that will improve law enforcement efforts throughout the Department of Justice. Although the battle cannot be won quickly, I firmly believe it can be won. I ask this committee to join in that fight.

In addition to our budgetary commitment to the fight against crime, this administration is strongly committed to working with the Congress to achieve much needed legislative reforms. This fact is underlined by the President's Comprehensive Crime Control Act of 1983.

The bill which the President sent to Congress on March 16, 1983, has been introduced as S. 829 by the distinguished Chairman, Senator Thurmond, and the distinguished Senator from Nevada, Mr. Laxalt. It is a comprehensive package of reforms designed to restore a proper balance between the forces of law and the forces of lawlessness. It is not necessarily intended to be processed as a single piece of legislation. However, it does establish our legislative agenda for the 98th Congress, and it does include the measures we need to strengthen our ability to fight crime effectively.

This morning I would like to outline the bill's most important provisions. Title I concerns bail and would permit the courts to consider a defendant's danger to the community when setting bail. It would reverse the presumption in current law in favor of granting bail after conviction. And it would provide for revocation of bail and increased penalties for crimes committed by persons released on bail.

The bill also provides for comprehensive sentencing reform. It would abolish the current system of parole that has led to so many abuses and substitute a system of determinate sentences with limited good-time credit. It would establish a commission to set sentencing guidelines, and it would allow appeals of sentences not within the guidelines.

We also seek reform of the exclusionary rule in order to permit the introduction of critical evidence while achieving more precisely the goal of deterring illegal police conduct. Under our proposal, evidence would not be excluded if law enforcement officers seized the evidence with a good faith, objectively reasonable belief that their conduct was within the law.

We would amend the law of forfeiture to provide for the forfeiture of the profits and proceeds of organized crime enterprises and drug trafficking enterprises. We would obtain authority to "freeze" forfeitable assets pending judicial proceedings. We would be permitted to obtain the forfeiture of substitute assets when other assets have been removed from the reach of the Government.

The bill would provide for a much-needed amendment of the insanity defense. Under the proposal we now advance, the defense would be available only for those individuals who are unable to appreciate the nature of the wrongfulness of their acts. Those who make such a claim would bear the burden of proof by clear and convincing evidence. Our proposal would also eliminate expert tes-

timony on the ultimate issue of sanity or insanity and would for the first time provide a Federal procedure for commitment of individuals found not guilty by reason of insanity.

Our legislation also proposes many other changes. One is reform of the habeas corpus procedures to require Federal deference to "full and fair" State court proceedings and to limit the time for filing habeas corpus cases.

Another would strengthen the penalties for drug violators and strengthen the DEA's ability to prevent diversion of legitimate drugs to illegal purposes.

In discussing badly needed legislative initiatives in the administration of justice, I would be remiss if I did not also mention the proposed Immigration Reform and Control Act of 1983. This legislation, recently introduced in both Houses of the 98th Congress, would increase the law enforcement powers of the Immigration and Naturalization Service by imposing sanctions on those who knowingly hire illegal aliens. And it would reform and expedite our procedures to return those who came or remain here illegally.

At the same time, the bill would deal realistically with illegal aliens who are now here—and safeguard against discrimination—by granting them a legal status. Failure to enact reform legislation of this kind can only result in further illegal migration, greater public frustration over the Government's inability to control our borders, and the negative social and economic effects occasioned by so large a number of persons living outside the law.

Mr. Chairman, that concludes my remarks.

I will be glad to respond to any questions.

HOUSE DEMOCRATIC BUDGET

The CHAIRMAN. Mr. Attorney, last night, the House of Representatives passed the First Concurrent Budget Resolution for fiscal year 1984, which was sponsored by the Democratic leadership. Can you comment on the provisions in that resolution which would affect the Department of Justice, and in particular, the administration's initiative against organized crime and drug trafficking?

Attorney General SMITH. Mr. Chairman, as I understand the measure that was passed, it would have the effect of reducing the amount authorized for law enforcement by approximately 7 percent in fiscal year 1984. That could affect our budget by a reduction of approximately $200 million.

Needless to say, we would be quite distressed were that apparent reduction ultimately to prevail. It would have a significant effect on our ability to do all the things that need to be done; indeed have to be done. If we are to get any kind of control over the crime situation in this country at the Federal level, we would need the resources we requested.

The CHAIRMAN. I understand that that budget decreased funds for law enforcement, which comes in your jurisdiction, and also funds for Defense, two of the very things that the President is trying to emphasize. Is that correct?

Attorney General SMITH. That is my understanding, yes, sir.

ANTI-CRIME LEGISLATION

The CHAIRMAN. As I indicated in my opening statement, we are most encouraged by the administration's program to fight crime, which consists of increased resources and a comprehensive crime package. In view of some of the problems we have encountered in the past in moving crime packages through both Houses of Congress, does the administration have any objection to moving some elements of its package separately? I am thinking particularly of bail reform, sentencing reform, insanity defense reform and the Justice Assistance Act.

Attorney General SMITH. Well, needless to say, Mr. Chairman, we would like to see it treated as a package. However, I think realism dictates that this is not a likely possibility. In order to see the enactment of any part of it, we would anticipate that the package would be broken up, and certainly we will support whatever effort is necessary to get all or any part of that package passed. We think all of it is necessary, but I am sure that some of the proposals could be separated out into individual bills.

The CHAIRMAN. We already have introduced separate bills covering most of the main elements of the package, and we will no doubt introduce other bills. We have also introduced the package. I would like to put it all before the committee. I would prefer to see the entire package intact, but in view of the information we receive from the House, it appears that a package probably would not receive favorable consideration. Maybe the reality of this is shown by the failure of the House to pass the entire package last year. We will do the best we can.

Incidentally, you would be interested to know that, at a meeting this morning of the Constitution Subcommittee, my bill on bail reform was reported out favorably to the full committee. We hope to act on that soon.

Attorney General SMITH. I am certainly glad to hear that, Mr. Chairman.

SIMPSON-MAZZOLI BILL

The CHAIRMAN. This committee, Mr. Attorney General, is most appreciative of the cooperation and assistance that we have received from the Department of Justice in the effort to revise our Nation's immigration laws. With the expectation that a version of the Simpson-Mazzoli bill will be enacted during fiscal year 1984, can you describe the additional resources that the Department will need to enforce it? How long would it take for the Department to have its resources in place and operating after the bill passes?

Attorney General SMITH. We would anticipate, if that program were enacted early enough in the fiscal 1983 year, to request a supplemental in order to fund any additional needs of INS. If it is too late in the fiscal year, then we would contemplate a budget amendment for 1984. We have already reviewed the proposed program and established the basic requirements that would be needed to implement that program. It is a little hard to identify the exact dollar figure, but we would anticipate somewhere between $125 and $200 million.

MARATHON CASE

The CHAIRMAN. Mr. Attorney General, this committee ordered reported on Tuesday a bill addressing the Supreme Court's decision in the *Marathon* case. Would you share with us the administration's position on the bill we reported?

Attorney General SMITH. As you know, Mr. Chairman, we thought originally that the only way to solve that problem was through article III judges. We recognize that there are practical problems with respect to that approach. In lieu of that approach, we would certainly support the proposal which was reported out by the Senate Judiciary Committee addressing the omnibus judges plus the article I approach to the bankruptcy problem.

The CHAIRMAN. Mr. Attorney General, the Department's fiscal year 1984 budget request again includes the elimination of the U.S. Trustees program. Could you comment on the appropriateness of that recommendation at this point in our efforts to revise the bankruptcy system?

Attorney General SMITH. As you know, Mr. Chairman, that program was an experimental program and it sunsets in April 1984. In the past, we have proposed discontinuing the funding for that program basically because we did not think it was properly a part of the Justice Department's activities.

However, in view of the fact that it will sunset in April of 1984, we anticipate that the program will be reviewed and evaluated as to its merits at that time and we have a request pending that would fund the program to that date.

The degree to which it is possible to consider the funding of the trustees program in connection with the *Marathon* case is something I just am not sure of. I just do not know if it is possible to do what is necessary to properly review the results of that experiment and incorporate the results into an overall solution of the bankruptcy issue.

VOTING RIGHTS ACT ENFORCEMENT

The CHAIRMAN. Mr. Attorney General, the fiscal year 1984 budget request includes additional funds for activities relating to the 1982 extension of the Voting Rights Act. Could you describe the precise nature of those activities and indicate whether further requests for increases are anticipated in later fiscal years?

Attorney General SMITH. As I indicated in my statement, we have asked for 15 additional positions primarily to provide the additional enforcement resources necessary to accommodate the amendment and extension of the Voting Rights Act, particularly, section 2 of that act. It is a little hard to determine what will be required for the next fiscal year until we have had some experience with it. But, in essence, that is the reason for the request, and we will have to see what our experience is.

AUTHORIZATION EXPIRATION

The CHAIRMAN. Regrettably, the authorization for the Department lapsed for several months during the last Congress. Could

you describe for the committee the effects of that lapse on the Department's day-to-day operations?

Attorney General SMITH. Well, it does have the unfortunate effect of handicapping certain operations of the Department, such as our undercover operations. We have requested that either a permanent authorization, or a multiyear authorization, be provided for that kind of activity so the handicaps with respect to those activities will be eliminated in the future. We strongly urge that our proposals be adopted.

DRUG ENFORCEMENT

The CHAIRMAN. Mr. Attorney General, there have been recent reports in the press that the South Florida Task Force will be continued under the direction of the Vice President's Office. Why will this task force continue to operate separately, rather than as a part of the Justice Department's Task Force operation?

Attorney General SMITH. It will be part of the Justice Department's Task Force operation. However, the South Florida Task Force is more or less unique. It was set up under the general chairmanship of the Vice President. It has worked well, and we see no reason at this point to make any significant changes in its structure, including the Vice President's participation.

The CHAIRMAN. I observe that the Department's request reflects a transfer of 500 positions from the organized crime drug enforcement function to the Treasury Department. What is the logic behind vesting OCDE responsibilities in two Cabinet agencies?

Attorney General SMITH. Well, actually the reason for that change is that the funding for all of the major drug initiative was included in fiscal 1983 in the Department of Justice's budget; that included the activities of the Customs Service and the other agencies of the Treasury that were involved in that effort.

In fiscal year 1984 resources expanded by the Treasury Department for this effort will be requested in Treasury's budget, not in the Department of Justice's budget so that is the reason for that change.

TORT CLAIMS AND FOIA

The CHAIRMAN. Mr. Attorney General, this committee is currently considering two pieces of legislation aimed at improving the functions of our Federal law enforcement agencies. S. 774 revises the Freedom of Information Act and S. 775 would make the United States the exclusive defendant in constitutional tort claims suits. Could you comment on the need for legislation in these areas and the impact that they would have on the Department's resource requirements, if enacted?

Attorney General SMITH. We very strongly support both of those proposals, Mr. Chairman. It is a little hard to say what the effects will be on the Department's resources. However, if the Freedom of Information Act passes, that presumably would reduce somewhat the need for additional resources because the anticipated additional workload will not materialize.

Also, the charges would be more closely related to the cost. That would have the effect of reducing the cost. With respect to the Fed-

eral Tort Claims Act, I suppose that the principal reduction there would be with respect to the employment of outside counsel which is now undertaken in order to defend individuals that are sued. It would be very speculative at this point to try to say what changes, or what effects either one of those bills would have on resources. They are both highly desirable on their merits, and we support them.

JUSTICE ASSISTANCE

The CHAIRMAN. In fiscal years 1982 and 1983, the Department did not request funds for law enforcement assistance to States and localities under the LEAA. For fiscal year 1984, the Department has recommended that $90 million be appropriated for such assistance. What is the administration's rationale for this change in position?

Attorney General SMITH. Well, I suppose it represents one of those compromises that we make from time to time. The question of priorities, budgetary stringency, and so on, caused this decision which is a change of our position in the previous years. We did not purport to pass on the merits of the particular activity. It was primarily a budgetary matter. This year we have agreed to fund these activities for $90 million which seems to be appropriate given the circumstances.

The CHAIRMAN. Mr. Attorney General, I understand that the administration's proposed justice assistance bill includes funds for emergency law enforcement assistance. Could you describe for the committee the types of situations where such assistance would be appropriate?

Attorney General SMITH. Well, I suppose situations such as the Atlanta case, involving the multiple murder situation which called upon the FBI to participate and possibly, the Olympics and national conventions are examples of the types of situations where such assistance would be appropriate.

The CHAIRMAN. In addition to the emergency assistance authorized in the Justice Assistance Act, are there other areas where the Department has requested funds which could be used to address emergencies?

Attorney General SMITH. I suppose the hostage rescue team is an example in that category. It is newly proposed and will be located here in Washington, D.C.

DRUG ASSET FORFEITURE

The CHAIRMAN. I understand that the Department has placed increased emphasis on the forfeiture of assets in drug cases. Can you describe some of the practical problems which have arisen, such as warehousing difficulties, and any related funding needs which may have been generated?

Attorney General SMITH. We have had problems in that area, problems that flow from forfeiting assets that we, due to court proceedings or for one reason or another, cannot dispose of promptly enough to recover the full value. Also, there are management problems.

If we seize, for example, a ranch, or a ship, or a plane, the management of these assets during any proceedings and until dispositions have to be identified, recognized, and taken care of. We have made substantial strides in this area. We think we are making real progress. But additional progress needs to be made.

We have proposed legislation to deal with forfeiture, and we strongly recommend that the proposed legislation be passed. Enactment of the legislation would greatly aid this effort, and certainly substantially increase the resources that would accrue to the Federal Government.

INCREASE IN DEA AGENTS

The CHAIRMAN. I observe that the administration has requested an increase in DEA agents stationed overseas. What is the purpose of this increase and where will those agents be stationed?

Attorney General SMITH. As you know, we have placed greater emphasis on the international aspects of the drug trafficking problem, and this is part of that effort. We are not talking about very many new agents. The new agents would be located generally in key transshipments points, such as Beirut, Greece, or Sicily.

The CHAIRMAN. Mr. Attorney General, the administration has requested a substantial increase in funds for the FBI, but a relatively modest one for the DEA. What is the reason for this?

Attorney General SMITH. The reason for that is that for the new drug task forces, DEA and FBI would be essentially equally represented from a personnel standpoint. The disparity in the funds have to do with the large amounts that would be utilized for technology and improving technology, and that is an area where the funds would be directed toward the FBI rather than toward DEA.

So in effect, there is no disparity. It just appears to be so because so much of the $202 million that goes to the FBI is to be spent for improved technology.

RESEARCH

The CHAIRMAN. Mr. Attorney General, in addition to the research performed by the National Institute of Justice, there is a small Federal justice research program in the general administration category. Please describe the need for such a program and its past accomplishments.

Attorney General SMITH. The National Institute of Justice essentially deals with matters of concern to the States and the localities. The Department has a very small research capability in the Office of Legal Policy, which is concerned primarily with matters of research at the Federal level.

COURT SECURITY

The CHAIRMAN. The Department's request restores 31 U.S. Marshal positions for the court security program. Please describe the circumstances which generated this increase.

Attorney General SMITH. That is a direct result of the agreement which I reached with the Chief Justice with respect to improving

our court security program, and the positions for court security are part of the implementation of that agreement.

DEBT COLLECTION

The CHAIRMAN. Mr. Attorney General, I understand that the Department has requested increased resources for debt collection. Please describe the Department's efforts in this area and the results you expect.

Attorney General SMITH. We have had excellent results as far as debt collection is concerned. This effort has not involved directly, increased resources. As an example of the progress that we are making, if we compare the first quarter of fiscal 1983 with the first quarter of fiscal 1982, the 1982 debt collections produced some $36 million, in the first quarter compared to $26 million in the first quarter of 1982. That represents very good progress. Debt collection is a matter of high priority with us, because we estimate there is over a billion dollars in assets that belong to the Federal Government which have to be collected.

The CHAIRMAN. Thank you, Mr. Attorney General.

I observed the distinguished Senator from Arizona, a valuable member of this committee, Senator DeConcini, has come in. After we turn to Senator Specter for his questions, we will turn to you.

We will try to take the Senators for questioning in the order in which they come into the committee. We generally take them by seniority, but since some sit here the whole time, and feel they should have priority, we adopted that policy.

Senator Specter.

ADDITIONAL FUNDING

Senator SPECTER. Mr. Attorney General, I for one would support the request for additional authorization, for additional funding along the lines which you have articulated here today and yesterday in the Appropriations Committee. My own sense is that to the extent it is possible for the administration to provide additional funding in the war on crime, that I would be very supportive of the administration's effort to do so, and I know from our prior discussions that you share that view, and would like to have additional funding too, except there are budgetary limitations on what you can, as a key member of the administration, suggest.

If we are in fact in the process of an economic recovery, and if we find it is possible to allocate additional resources at the Federal level to fight crime, what would your thinking be as to priorities that you would like to see, if, as, and when additional funding becomes available?

Attorney General SMITH. Well, our strong thrust has been in the area of drug trafficking, and drug trafficking in combination with organized crime, because there is no way to separate those two.

With respect to our current budget, which represents an increase of 15.3 percent over last year, we believe that to be a substantial increase, and we are very pleased with it because it recognize the fact that law enforcement is truly a priority, a domestic defense, so to speak. It has to be treated that way.

I mentioned drug trafficking and organized crime because, every one of our law enforcement coordinating committees, which represent the sentiment not only the Federal law enforcement but also the State and local levels list that as their top priority. As you know, we have established Law Enforcement Coordinating Committees in our 94 Federal districts. They agree that area requires maximum attention.

That does not mean, that we will neglect other areas, such as public corruption, or white collar crime. Also we have to consider such matters as organized crime per se because of the changing nature of the organized crime groups motorcycle gangs, prison gangs, and so on. We also have to focus attention there.

There are other matters which are very strongly addressed in the current budget, namely, increasing our technology. On surface, that does not have the appeal that some other more direct efforts might have, nevertheless, advanced technology is critical for law enforcement if it is to do its job, and do it well.

PRISON CONSTRUCTION

Senator SPECTER. Mr. Attorney General, where would you place a priority, if at all, on prison construction? There have been a variety of proposals that have been made. Senator Dole has, for some years, been in the forefront on very expansive proposals.

When you were before the Appropriations Committee yesterday, I told you that I was going to introduce a bill really designed for future thinking to set the parameters, an allocation of 1 percent of the Federal budget for the fight against violent crime, and in a proposal I advanced, there is substantial funding for prisons.

Last year I introduced legislation which would call upon the Federal Government to provide prisons for life sentences for habitual offenders. Some 40 States have habitual offender laws. Nothing would please us more than to see the States deal with criminals on their own without the necessity of the Federal Government getting into their act vis-a-vis the career criminal bill which you and I have discussed.

One of the limitations that comes down from the State level is there is no place to put them. If the Federal Government would provide regional prisons for habitual offenders, it would take away the reason that many State court judges have not to sentence, and these are offenders truly in interstate commerce, and that costs a great deal of money.

But I would be interested in your thinking, about your evaluation of that as a long-range proper goal for Federal funding.

Attorney General SMITH. Senator Specter, I think you are to be commended for giving that kind of forethought to this very important problem.

For the first time—at least so far as we know, we have tried in our budgeting process to address law enforcement on a systemwide basis. In other words, we have to review the situation with respect to investigations with respect to prosecution, with respect to prisons and corrections and, of course, with respect to the judiciary as well. There is no point in being very efficient in one of those areas and inefficient in the others. We need to be efficient in all of them.

The Federal prison system is certainly a very important part of that system. The needs of our corrections activity are well recognized in this budget. As I pointed out, we have allocated some $106 million for that effort. We have also made some other efforts which are very important. We have made available our abandoned Federal facilities, such as military bases to the States for their own use. This is a program that really is just getting off the ground.

We have a proposal before Congress to permit us to give those facilities to the States free of charge, instead of having to sell them at fair market value, or leasing them, which is what we have to do now. As you know, the correctional problem is much more acute with the States and localities than it is with the Federal Government. In addition as we discussed yesterday, we have looked at such matters as the proper classification of prisoners, whether they should go to maximum security, intermediate or minimum security, and in some cases, whether or not the punishment function can be performed as well through nonincarceration alternatives such as restitution to victims or community service, and so on. This is an area which I think is getting more and more attention, and it should get the attention, because the situation is critical.

Two years ago we were just about at capacity. Now we are 23 percent overcapacity and growing at a rate of about 1 percent a month. This is frightening in a very real way. We believe that if our proposed program for this year were implemented fully, we would reduce overcrowding from 23 percent to 16 percent. Nevertheless, we would still be 16 percent overcapacity.

JUVENILE CRIME

Senator SPECTER. Mr. Attorney General, you and I discussed yesterday some of the aspects of the juvenile crime problem, and since yesterday I have just received the report to the Attorney General from the Secretary of the Interior, from the U.S. General Accounting Office, which is dated March 25, 1983.

Have you had an opportunity to see this yet?

Attorney General SMITH. I have not.

Senator SPECTER. It is probably somewhere on your desk, in the voluminous matters which come to your attention. This is a very profound study on the juvenile justice problem, and points up a number of the difficulties in the juvenile justice system.

I know that your attitude has been, and we talked about this briefly yesterday, that as a matter of priority, funding ought not to be there. In light of these findings, I would like to discuss that with you, although very briefly, and certain other aspects of the juvenile justice, and delinquency procedures.

There are some 479,000 juveniles estimated by your Department's study, to be held in adult jails and lockups, and in the Federal legislation, the removal mandate was added in 1980, which gives the States until 1985 to 1987 to have compliance with that.

I would be interested in your thinking on how the States would be pushed along if we abandoned, say, the OJJDP, and did not pass even $70 million in Federal funding?

Attorney General SMITH. Certainly, we do not quarrel with the desirability of that kind of program. As we have indicated before,

our position continues to be that the funding for that program was in the nature of seed money, and that this purpose has been accomplished more or less. We believe, it now is a responsibility for the States and localities to carry on with this program. We assume that the States would perform their function as they should perform it. At least I do not think we can assume that they will not, unless we have a better record than we have.

Senator SPECTER. Mr. Attorney General, that is the problem that I see. My view is not—I do not think it serves any purpose to analyze seed money versus nonseed money. The focus that you and I both come down to in agreement is whether the States are going to do it, and when they are.

There are some 479,000 in detention annually. That raises a problem. Of course, you have not had a chance to study this, but these are five States that are picked out, and they are pretty good States by way of compliance, generally. They are Massachusetts, New Hampshire, North Carolina, Oregon, and Virginia, which are States that have had good records overall, not perhaps as good as South Carolina and Arizona and Pennsylvania, but they have good records, nonetheless, and this GAO study has found that there is very substantial detention of juveniles who have committed no offenses at all, others where their acts would not be offenses if they were adults. They are runaways, and here they are in detention. The hearings we held last year found that there are many States which still have the practice of mixing juveniles and adults.

So here you have a runaway who is not charged with an offense, a 14-year-old, and he is put in a cell with an adult, hardened criminal, and it seems to me, from what I have seen, that there are two big causes of crime in this country today. One would be drugs, which you testified so eloquently about, and the other would be the treatment of juveniles. If you could isolate a cause, we are training adult criminals when we place a runaway juvenile, especially the girls, the young women—it is OK to call them girls if they are under 14—in detention with adult offenders. One answer which I am groping toward, and would like to report out bills for consideration by the chairman of the committee, S. 520 and 522, based upon the hearings we had last year, to require that States not have in detention children who have not committed offenses, and that the States not mix juvenile and adult offenders. So far we have not done that.

It raises a question of Federal-State relationships. But perhaps we have come to the point where we simply ought to impose that Federal law. I think we clearly have that authority to do so, if we choose to do so, in our judgment, and if we did that, then we come to the point perhaps that you are suggesting, that we have to rely on the States to enforce the law, but there ought to be a national determination, just on these two propositions.

One, that you cannot take a juvenile who has not committed an offense, and hold him in jail, and two, you cannot mix juveniles and adult offenders.

What would your wisdom be on those two propositions?

Attorney General SMITH. I certainly sympathize with the merits of what you say. The question as to who should do it is probably what is at issue here. We think that this is an excellent example of

where the States and the localities should exercise their own responsibilities.

This issue gets into the overall question of Federalism, and to what degree does the Federal Government involve itself in what we believe is best for the State and localities, as opposed to the States and localities diagnosing their own problems and coming up with their own solutions.

Generally speaking, we think that the issue should be resolved in favor of a smaller Federal role rather than the larger one. Of course, there are situations where that cannot be the case. Absent a very compelling showing, however, it seems to me that this is a case where the States and the localities should make their own determination as to the extent of their participation; and if they are not doing what they should be doing, then the pressures and persuasions should be directed at the decisionmakers in those States to make the appropriate effort, rather than superimposing the Federal will, as it were, upon them in areas which really are appropriately State and local areas for determination.

Senator SPECTER. Well, we have made a determination on the Federal level in the juvenile justice area. We have established the standards. We just have not gone the last step and said it has to be done. We consistently criticize the courts for stepping into these areas where there is not legislative action, and there are some things the courts cannot do, since *Brown* v. *Mississippi* in 1956. If the State would tolerate the coerced confession, we would not permit that. It was not the Congress that did that. It was the Supreme Court. To a significant extent in criminal law where those standards have been implemented, it is the courts.

I am interested in your views.

Attorney General SMITH. I will read that report with interest.

Senator SPECTER. I would be interested if you would let me know, Mr. Attorney General, what your thinking is, after you have had a chance to read the report. I agree with your standard, absent compelling circumstances, leave it up to the States.

My judgment is, from what I have heard, and I have heard a lot more because it is my job as Chairman of the Juvenile Justice Subcommittee, that the compelling circumstances have been shown. If we are going to say that even $70 million is not going to be available to push the States along, and the $70 million really does not go very far, I would rather say this is the standard, and you States, you abide by it, rather than use the $70 million, but I would be interested in your views.

Attorney General SMITH. I would be glad to do that.

CLOSING OF FIELD OFFICES

Senator SPECTER. Let me ask you, I have been asked by Senator Metzenbaum, as a courtesy, to call to your attention his letter of March 23, 1983, which is just yesterday, so I am sure you have not had a chance to respond to it, perhaps even note it.

He has asked about the reported closing in Cleveland of the antitrust field office. I had heard about Philadelphia. But do you have additional information of that subject today, Mr. Attorney General?

Attorney General SMITH. Our job at the Department of Justice is to administer the laws in the most cost-effective way that we can, and as a result, our field organizations are constantly under review. We are constantly reviewing how most effectively to do the things that we have to do. Certainly, one of those reviews is whether or not offices such as Cleveland are cost effective and whether or not activities there could be performed as well out of Chicago, out of Washington or out of Philadelphia. Although no final decision has been made in that respect, all of those offices are under review.

Although this is not directly connected, we are also considering the degree to which there should be more people out in the field trying cases, rather than being in Washington. This organizational arrangement is also under review, and constantly so.

Senator SPECTER. If you would pursue that line, there would be more of a need for field offices like Cleveland and Philadelphia.

Attorney General SMITH. Yes, and where they should be, how effective they are, and so on. We will respond to Senator Metzenbaum's letter, and indicate where we are with respect to that.

But overall, we have to make those decisions from the standpoint of what is most effective, and as I say, all of these offices are really under review on a fairly regular basis.

Senator SPECTER. Senator Metzenbaum could not be here, and he knew I was a regular attendee at these sessions, so he asked me to pass this along.

Attorney General SMITH. We would be glad to respond.

The CHAIRMAN. The Senator from Arizona?

WITNESS PROTECTION PROGRAM

Senator DECONCINI. Mr. Chairman, I missed the appropriations meeting yesterday, and I apologize, but I have three questions regarding your authorization proposal here.

Is there an increase in funding for next year, 1984, in the Federal witness protection program under the marshals service?

Attorney General SMITH. There is no funding increase for the Federal protective witness program for the U.S. marshals.

Senator DECONCINI. Is there some reason why you have not increased the funding? With your stepped up efforts toward organized crime and narcotics, is it not fair to assume that you are going to have more protected witnesses and informants than you are going to have to use? How are you going to handle them without an increase in that area?

Attorney General SMITH. Actually, the direction in the last year has been to improve the quality of witness protection rather than the quantity. We have been looking very closely at the types of people who have been involved in the witness protection program to make sure that only those who really need to be in it are in it.

Senator DECONCINI. Have you had an opportunity to look at this yourself?

Attorney General SMITH. The results of it?

Senator DECONCINI. And the operation of it.

Attorney General SMITH. The operation of it, in general terms.

Senator DECONCINI. I call it to your attention because I think it is a significant program that functions not as well as it could be-

cause of lack of attention once someone is in it. I realize the people that go into it often are problems. They have criminal records, and they are not satisfied with the arrangements the Justice Department has made.

I just ask that in your busy schedule, if you could involve yourself with an assessment of it, you might come to the same conclusion. You might not, but I am very concerned about that program getting enough attention from the Justice Department, as to the amount of resources that are available once someone becomes a paid informant and a protected witness.

Attorney General SMITH. I must say that this program has received a fair amount of attention, because of occurrences here and there. There have been one or two pretty dramatic occurrences. Our attention has really resulted from this review that I have just mentioned, namely, the efforts to really make certain that the people who are in it should be in it, and those who should not be in it are not in it.

As you say, it is a very, difficult program to run and operate. It is almost a problem by definition. So it does require a great deal of skill, and a great deal of attention. It really amounts to a program which attempts to minimize the risk to the protected witness.

PRISON CONSTRUCTION

Senator DECONCINI. One specific question.

In your statement you mentioned $96 million for new Federal prison capacity. Does that include the construction moneys to finish the Phoenix Federal Institution?

Attorney General SMITH. No, that is not in the $96 million. I believe that was in our 1982 budget.

Senator DECONCINI. The total funding for that?

Attorney General SMITH. I believe the total construction funding for Phoenix is $22 million.

Senator DECONCINI. And also in your——

Attorney General SMITH. As you know, that is moving along.

Senator DECONCINI. And I want to thank the Justice Department, and the Bureau of Prisons for its attention in that part of the country.

PROSECUTORIAL STAFF

You talk about here 340 prosecutorial staff in the regional drug task forces. This is one Senator that is very pleased that you have paid attention to the prosecutorial needs as well as the investigative needs.

Are there any additional deputy U.S. attorneys for the criminal prosecution area outside of the drug task forces that would be in expansion? Take the District of Arizona. I know the U.S. attorney there is reluctant to ask for more than he is allocated, but he has not enjoyed much of the growth there, and he has had a growth in crime and population.

I wonder if there is any thought to expanding the general prosecutorial staff, other than the task forces?

Attorney General SMITH. No. Overall—of course, they will vary from office to office—there have not been any significant increases

in just the regular prosecutorial staff. But the fact that we are adding as many new prosecutors as we are for these drug task forces is bound to have an overall effect in a U.S. attorney office. Since so much of the drug related prosecution work will be done by the task forces themselves, this will certainly provide some relief for existing staff since much of the drug related prosecutions would otherwise be done by them.

Senator DECONCINI. Can you tell us what will be the task forces' prosecutors' relationship with the U.S. district attorney within that area? Will they be housed together? Will they have a committee, or some kind of communication together? Is there any structure already in place, or that you anticipate putting in place?

Attorney General SMITH. The structures for the task forces are already in place. They are not at total operational capacity yet, but each of the task forces have been organized. Core cities have been determined, and they are working on cases that have been selected and assigned to them. Each task force has its own coordinator, whose function is to work with the various groups that are involved under the general supervision of the U.S. attorney.

CUSTOMS BORDER INSPECTION

Senator DECONCINI. Turning to another subject, one idea that has reached very high levels of the administration, is the possible consideration of primary border inspection in the U.S. Customs Service. This could mean as many as 900 positions going over to the Treasury Department.

Yesterday in a briefing by Presidential Counselor Meese, on the national narcotics border system, he talked about this, and the potential shift, and I wonder if you care to tell us your position on the proposed consolidation of primary inspection in customs?

Attorney General SMITH. This is a subject that has been discussed for a long time. So far as I know, no conclusions have yet been reached because there are so many pluses and minuses to this issue. It is hard to add them up and determine any particular specific conclusion. Essentially, it is a management problem. The issue appears to be whether or not these two functions can be combined, effectively.

Senator DECONCINI. How do you feel about it?

Attorney General SMITH. Well, I do not have any conclusion at this moment. We are still studying and reviewing it. Every time we do come close to some kind of a conclusion, some other fact is added, which somehow makes a difference. We think that for the INS function to go to customs, or for customs to take over the INS function on the border probably would be a mistake.

Senator DECONCINI. You think it would be a mistake?

Attorney General SMITH. However, that is only a very tentative conclusion. As I say, there are so many factors, and we are working in so many other related but different areas.

For example, tied to all of this is the new immigration program, which we very earnestly hope will get out of this Congress. The implementation of a new program such as we are proposing could very well produce information that would be valuable in determining how this other problem should be ultimately resolved.

NATIONAL NARCOTICS INTERDICTION BORDER SYSTEM

Senator DECONCINI. Mr. Attorney General, the last area of questioning I would like to address is how your Department will be represented on both the executive board and the coordinating board of the new National Narcotics Interdiction Border System proposed by the administration. What specific role would you play on that Board, and what role would the different agencies under you have on the coordinating board?

Attorney General SMITH. Well, that group is essentially a coordinating group. It is designed to accomplish certain tasks in a certain area, namely, interdiction at sea; one might say, it will be the task to look outward from the Continental United States. We had some very good results from the coordination effort in south Florida presided over by the Vice President; especially, we have had good results in the area of interdiction, coordinating the activities of the Coast Guard, and the Armed Forces, the Department of Defense in the interdiction program, and so on.

What we want to do with this effort is really to expand the success we have had in south Florida, especially the interdiction part of the south Florida effort, which was mostly a coordinating effort, all around the borders of the United States. We believe the success of the south Florida interdiction effort can in effect happen elsewhere around the country, and provide a very excellent complement to the work that is being done by the drug task forces. Consequently, this effort seemed to be a very logical next step after the drug task forces were put in place and implemented.

Senator DECONCINI. Mr. Attorney General, I am very excited about the Vice President's continued involvement in this area, as being the national coordinator, or Chairman of the Board, so to speak. With the new area interdiction program, for which funds were authorized in the jobs bill, along the southern tier of the United States, what would be your directive to the agencies under your authority, as to coordinating with Intelligence, with the Customs and the Air Force and the Army, which are involved now for the first time along the entire southern tier?

What is the process of your agencies coordinating and working with Customs, and the other area interdiction groups? Are you going to be counsel? Are you going to do it yourself? Are you going to designate yourself, or how will it function?

Attorney General SMITH. Senator, it will be a continuation of what we have done on a smaller scale elsewhere, first in South Florida, and now with the Task Forces. All of these operations are essentially a cooperative effort.

Senator DECONCINI. I understand. But now you have to coordinate and cooperate from coast to coast not just one particular area of the country. What is the directive going to be from you to the FBI and the DEA and the other agencies in Florida as to information they find out about area interdiction, or information informants give them on penetration in Arizona, New Mexico, California?

What is the line of communication? That is what I am interested in knowing, or has that been established?

Attorney General SMITH. Of course, EPIC is sort of at the heart of all of this.

Senator DECONCINI. EPIC will be the key?

Attorney General SMITH. In terms of intelligence exchange. Of course, we are also, as you know, for the first time, utilizing intelligence capabilities of the Armed Forces, and that has already turned out to be very valuable. EPIC, of course, has grown rather dramatically in recent years, and will undoubtedly continue to do so. That will be a central point of our efforts.

Also, the FBI has its intelligence networks. All of those will have to be brought together, and that will be part of this overall effort.

Senator DECONCINI. EPIC is under Customs primarily?

Attorney General SMITH. Under DEA.

Senator DECONCINI. What is the policy under DEA and under the Justice Department to insure the sharing of the intelligence information from EPIC to agencies that are outside of the Justice Department?

Attorney General SMITH. Of course, adequate sharing has been part of the program and plan really from the beginning. Actually, it is just not a matter of sharing intelligence. It is a matter of sharing resources.

Senator DECONCINI. You are aware that there are some problems among law enforcement agencies that sometimes feel they do not get any information?

Attorney General SMITH. There will always be some problems wherever two or more Federal agencies are gathered together and there will be undoubtedly some growing pains in connection with this program. This is a new initiative. It is a very extensive initiative with respect to the Drug Task Forces' handling of the various geographical areas of the United States, and the interdiction efforts in these areas. We will be looking at it from the borders of the United States.

That is a major undertaking and I am sure there will be some growing pains. But our experiences have been excellent in terms of the cooperative effort, not only in terms of the intelligence, but working together, achieving the common goal. Actually, the striving for the common goal I think this is one of the best results of the South Florida Task Force.

Senator DECONCINI. You are satisfied that the South Florida Task Force—that Customs was totally pleased with Justice, and vice versa?

Attorney General SMITH. Very much so.

Senator DECONCINI. I do not get that from talking to some of the agents. I do get that it is a great improvement over past efforts, primarily because of the Vice President personally involving himself in some jurisdictional disputes, but I do not get it is a total panacea, by any means. Obviously, you agree there needs to be a further refinement and forceful cooperation.

Do you agree with that?

Attorney General SMITH. It will have to be a continuing effort. There are some good examples, however, of how effective cooperation can be accomplished in the consolidation of the FBI and the DEA. There was a good deal of comment when that first happened. Statements were made that this could never work, because the

DEA has its own way of doing things, and the FBI has its own way of doing things, and that the DEA had good working relationships with the States and localities.

Actually, the consolidated relationship has been highly successful. I just came back from a joint annual meeting of all of the FBI SAC's, and all of the equivalent DEA people and the relationships there were and are outstanding. That does not mean that there have not been problems. There are bound to be problems, and our responsibility is to work those problems out. I think the consolidation has worked dramatically well, as far as FBI and DEA are concerned, and we are certainly very heartened with respect to this overall effort which involves these agencies.

Senator DECONCINI. Thank you, Mr. Attorney General.

I just want to end by telling you that I am pleased that you are taking the time and effort to visit South America sometime in April or June, whenever it is. I think it is very important and significant that our Attorney General, the chief law enforcement officer, would travel to these countries in an attempt to get cooperation.

It emphasizes further from the State Department the seriousness that our administration, and our Government in whole, gives to this cooperative effort to stem drug trafficking. I wish you well.

Is anyone on that trip traveling with you from the Vice President's Office, or from the Executive Board of the New Interdiction System?

Attorney General SMITH. We will have a representative from the State Department. We will have our own Drug Enforcement personnel. We will have a high ranking Coast Guard official with us, which pretty well cuts across the spectrum of the agencies that are involved in this effort.

Senator DECONCINI. That cuts across the coordinating board. I am concerned about the executive board, and particularly someone from the Vice President's own office. I would love to see him go, but he is busy. Because if this effort is going to succeed, I think it is important that the Vice President be included in your negotiations, or whatever business you are going to take up. I just make that as a suggestion.

Attorney General SMITH. We would be delighted to have him. He is stretched a little bit thin. But he is heartily in favor of this overall effort, and of course, is very much a part of it.

Senator DECONCINI. Thank you, Mr. Attorney General.

Thank you.

The CHAIRMAN. Thank you, Senator.

Mr. Attorney General, I have some questions here from Senators Denton, Biden, and Simpson. If you would answer those for the record, it would save us time.

Attorney General SMITH. Yes, we would be glad to.

The CHAIRMAN. If you could expedite those so that we have the answers soon, we could take action on the bill. We will keep the record open for a week for any Senators who wish to propound questions, and if you would be kind enough to answer those, we would appreciate it.

Attorney General SMITH. Be glad to.

[The following was received for the record:]

QUESTIONS FOR ATTORNEY GENERAL WILLIAM FRENCH SMITH FOR THE DEPARTMENT OF JUSTICE AUTHORIZATION HEARING, MARCH 24, 1983

QUESTIONS SUBMITTED BY SENATOR ALAN K. SIMPSON

QUESTION

Assuming we amend the Immigration Reform and Control Act of 1983 to include an authorization of $200 million for the purpose of implementing S. 529 when it is passed, will the Department of Justice support such an authorization? In addition, will the Department of Justice support a supplemental appropriation for the purposes of S. 529 if we get the bill passed early enough in 1983?

ANSWER

The administration is totally committed to passage of the Immigration Reform Act of 1983. We believe that passage of the legislation is critical to regaining control of our borders and establishing an orderly immigration process.

The administration plans to submit either a FY 1983 supplemental budget request or an amendment to the FY 1984 budget depending on when immigration reform legislation is enacted. Preliminary estimates for the legalization and employer sanctions portions of the bill range from $110 million to $150 million. The estimates do not include requirements for enhanced border enforcement which are presently being developed. It is important to note that these estimates are preliminary and are subject to OMB approval and changes depending on the provisions included in the final version of the bill.

QUESTION

As you know, the recent GAO report on employer sanctions in foreign countries pointed out that the reason sanctions didn't work in certain countries was due to lack of resources and enforcement resolve. Since employer sanctions is the keystone to regaining control of illegal immigration into this country, we have included $200 million in additional funding for the Immigration Reform and Control Act within the Judiciary Committee's overall budget request for 1984 Department of Justice authorization. Assuming the bill does pass early in the 1984 fiscal year, would you support the authorization of such funds in the 84 budget to facilitate the INS' effective and timely implementation of the immigration reforms?

ANSWER

As stated previously, the administration is totally committed to passage of the Immigration Reform and Control Act. We believe that passage of the legislation is critical to regaining control of our borders and establishing an orderly immigration process.

If the bill passes early in the 1984 fiscal year, the administration will support an amendment to the FY 1984 budget. As previously noted, preliminary estimates for the legalization and employer sanctions portions of the bill range from $110 million to $150 million. The estimates do not include requirements for enhanced border enforcement which are presently being developed. It is important to note that these estimates are preliminary and are subject to OMB approval and changes depending on the provisions included in the final version of the bill.

QUESTION

We received testimony at our recent hearing concerning the Immigration Reform and Control Act of 1983 with regard to increased apprehensions along our Southern Border. Do we now need additional funding to provide needed increased enforcement at the border and the interior as well as to promote better service within the Immigration and Naturalization Service?

ANSWER

Apprehensions along the Southern Border have reached unusually high rates in recent months.

Beginning in August 1982, every month has produced apprehensions at the highest levels in thirty years.

Efforts are being made to combat the problem through the use of mobile task force operations directed to areas of increasing illegal entry. Despite the efforts of the task force operations, activity along the Southern Border continues at high levels.

We are presently reassessing the manpower needs along the Southern Border.

QUESTION

Where does the automatic data processing effort stand? All last year we were told it would be operational by January 1, 1983, but we find there is an increase of additional funding required for that effort in your testimony.

ANSWER

Initial implementation of the long-range ADP Plan began during FY 1982 and numerous Phase I efforts are underway during the current year. The new Nonimmigrant Information System became operational on January 1st. FY 1982 and 1983 activities have been supported by the reallocation of existing resources.

The FY 1984 request is especially significant in that it represents the first full year of funding for the new automation program. The automation program, when fully implemented, will result in significant operating efficiencies which will allow INS to keep pace with its ever-increasing workload.

The most important single segment in this decision package is the Equipment Acquisition project -- the competitive acquisition of computer processing and communications network capacity which will address the total technical requirements of INS. The budget request for FY 1984 includes the hardware, software, data communications, site preparation, and related INS personnel costs required to implement a new automation system in the INS' eight largest district offices, five major ports of entry, the largest border patrol sector headquarters, Western Regional Office and a national records center.

The major elements of the data and communications increase request are categorized as follows:

I. Equipment Acquisition

The acquisition of all aspects of ADP capability necessary to support the goal of automating the INS' numerous operating functions. This is a multi-year effort beginning in FY 1982 and culminating in final selection in FY 1984. The development of

systems to be supported by this equipment and capability will occur beginning in FY 1983 and continue over the next ten year period. Two-year spending authority has been requested for this category.

II. New System Development

This is the system development aspect of the Equipment Acquisition project. Numerous support systems and databases as defined in the Long Range Plan will be developed during the FY 1984 - FY 1985 period. This activity is planned to run concurrently with the acquisition of computer capability to allow full use of newly implemented automated systems during FY 1984. Two-year spending authority has also been requested for this category.

III. Operation of Recently-Implemented Systems

This category includes resources to allow the INS to operate systems and databases that are now being implemented, e.g., the new Nonimmigrant Information System which became operational in January and is now replacing the old Nonimmigrant Document Control System. Funds requested represent the net increases required as old systems are replaced with new systems and databases.

IV. Data Communications

This is an increase in the INS' Interim Data Communications Project to allow access to new systems at 156 field offices. This capability is required to insure adequate data communications to those sites which will not receive new network communications under the Equipment Acquisition project until after FY 1985.

V. Radio Communications and Intrusion Detection Systems

This category includes all items requested to support the INS' enforcement activities in the border areas. The request represents a significant increase in the level of technology support to INS operations. Major elements are: (1) purchase of mobile and portable radios; (2) replacement of district and sector radio systems at six locations; (3) radio maintenance and test and diagnostic equipment; and, (4) purchase of low light level television and night vision devices.

QUESTION

We understand that in several major cities, INS is unable to efficiently process applications for naturalization. The backlog for the conferral of the important benefit is up to three years, and this is for persons who are fully eligible to become citizens, but INS is unable to handle the paperwork and processing.

Does the Service require additional resources to address this problem? If not, what steps will be taken in 1984 to improve the situation? What is the goal for reducing the naturalization backlog in 1984?

ANSWER

INS currently has an average 6.1 months' pending Applications to File Petition for Naturalization (N-400) workload. This is down from an average of 7.5 months at the end of FY 1981. As a result of various steps taken by the Congress and INS, measureable progress in improving the processing time for naturalization cases and reducing backlogs is anticipated in FY 1983 and 1984.

First, although the effect of the efficiency legislation passed by Congress at the end of 1981 was not felt until the second half of FY 1982, available data since then indicates production during that period was improved by 22 percent and ultimately one-third more N-400's per year may be processed as a result of this measure.

Second, as a result of the reorganization and merger of the naturalization and adjudications programs, which became effective January 1, 1983, INS has been able to take steps to better deploy its resources to address workloads. As part of the overall reorganization plan and INS attorney consolidation plan, general attorneys are being gradually phased out of naturalization processing and replaced with immigration examiners, whose duties are being expanded to include naturalization. This will give INS added flexibility to its workforce - immigration examiners will be able to do both adjudications and naturalization work as needed. INS expects to fill all vacancies resulting from the reorganization and attorney consolidation plan by May 1983 and is taking steps to convert its paralegals to immigration examiners. As vacancies are filled and the immigration examiners gain experience in doing naturalization work, production will increase.

Third, INS is planning to install the automated Naturalization Citizenship Casework Support System (NCCSS) at four to seven locations in FY 1983. The first of these installations is in place at Los Angeles and an additional 15 to 20 installations are anticipated in FY 1983. This system will provide information on past and future cases and will produce notification letters, interview schedules, dockets, etc., and help INS better manage and track its caseload and serve the public.

Fourth, The Adjudications and Naturalization Division is examining the extent to which it can improve production through balanced use of remoting, regional adjudications centers, up-front processing and traditional methods of processing. In addition, the Division is planning to conduct a test to determine whether up-front processing of naturalization applications would improve productivity and service to the public. It is also planning to test a profiling system to improve scheduling of interviews so as to make better use of officer time.

The key to future improvements in the naturalization area is passage of legislation to allow administrative naturalization which would eliminate the paperwork and processing requirements imposed by the present court proceedings.

REMARKS BY SENATOR JEREMIAH DENTON (FOR THE RECORD)
MARCH 24, 1983
COMMITTEE ON THE JUDICIARY HEARING
CONCERNING DEPARTMENT OF JUSTICE AUTHORIZATION

MR. CHAIRMAN, I REGRET THAT I COULD NOT PARTICIPATE TODAY, DUE TO A LONGSTANDING PRIOR COMMITMENT TO A HEARING OF THE SUBCOMMITTEE ON FAMILY AND HUMAN SERVICES, OF WHICH I AM CHAIRMAN. HOWEVER, I DO WANT TO OFFER SOME BRIEF OBSERVATIONS CONCERNING THE DEPARTMENT OF JUSTICE AND ITS PROPOSED BUDGET FOR FISCAL YEAR 1984.

I AM ESPECIALLY PLEASED TO SEE THE AUTHORIZATION OF SUBSTANTIAL RESOURCES FOR THE ATTACK ON DRUG-RELATED CRIME AND ON THE ILLICIT DRUG TRADE, WHICH EFFORT IS BEING LED BY THE DRUG ENFORCEMENT ADMINISTRATION WITH THE INCREASING ASSISTANCE AND DIRECT INVOLVEMENT OF THE FEDERAL BUREAU OF INVESTIGATION. THE RECENT DEA/FBI REORGANIZATION IS STILL TOO NEW AND UNTESTED FOR A DEFINITIVE EVALUATION BUT THE PRELIMINARY RESULTS OF THIS JOINT EFFORT ARE ENCOURAGING. THE AUTOMATIC DATA PROCESSING, DATA TELECOMMUNICATIONS AND VOICE PRIVACY RADIO SYSTEMS, WHICH ARE PART OF THE DEPARTMENT'S REQUEST, CAN ONLY FURTHER ENHANCE BOTH THE DEA'S AND THE FBI'S ABILITY TO MATCH THE SPEED AND SOPHISTICATION OF THOSE INVOLVED IN ILLEGAL DRUG TRAFFIC.

AFTER THE FOUR OVERSIGHT HEARINGS WHICH THE SUBCOMMITTEE ON SECURITY AND TERRORISM HAS ALREADY HELD ON THE ACTIVITIES OF THE DEA AND THE FBI, WITH ANOTHER ONE SCHEDULED FOR TOMORROW AFTERNOON, I AM SATISFIED THAT THESE AGENCIES ARE MAKING EVERY EFFORT TO DISCHARGE THEIR RESPONSIBILITIES AS EFFICIENTLY, AND AS EFFECTIVELY, AS POSSIBLE, CONSIDERING THE FISCAL RESTRAINT WHICH PRE-EXISTING ECONOMIC CONDITIONS HAS MANDATED. THE SUBCOMMITTEE WILL CONTINUE TO MONITOR THE ACTIVITIES OF THESE AGENCIES TO ENSURE THAT THEY CONTINUE TO DO SO.

MOREOVER, THE PRESIDENT'S INITIATIVE WITH RESPECT TO THE ESTABLISHMENT OF 12 NEW REGIONAL DRUG TASK FORCES PROMISES TO IMPACT SUBSTANTIALLY ON THE INVOLVEMENT OF ORGANIZED CRIME IN THIS BURGEONING ILLICIT INDUSTRY.

THE FBI'S ELEVATION OF TERRORISM TO ONE OF ITS FOUR NATIONAL PRIORITY PROGRAMS IS A STEP WELL-TAKEN, ESPECIALLY GIVEN THE INCREASE IN TERRORIST INCIDENTS BOTH INTERNATIONALLY AND DOMESTICALLY IN 1982. I TRUST THIS NEW EMPHASIS WILL EXTEND NOT ONLY TO THE FBI BUT TO ALL OTHER FEDERAL AGENCIES WHICH HAVE RESPONSIBILITIES IN THIS AREA, INCLUDING THE OTHER BUREAUS AND DIVISIONS WITHIN THE DEPARTMENT OF JUSTICE.

FINALLY, THE NEW GUIDELINES ON DOMESTIC SECURITY INVESTIGATIONS WHICH HAVE JUST BEEN PROMULGATED BY THE ATTORNEY GENERAL ARE A WELCOME AND MUCH-NEEDED CHANGE. INTELLIGENCE IS THE KEY TO DEALING WITH INTERNATIONAL TERRORISM AS WELL AS DOMESTIC TERRORISM, SUBVERSION AND VIOLENCE. FOR TOO LONG, THE FBI HAS BEEN HAMPERED BY RESTRICTIVE GUIDELINES, AND INTERPRETATIONS THEREOF, IN ITS ABILITY TO GATHER CURRENT INTELLIGENCE ON DOMESTIC INDIVIDUALS AND GROUPS WHO ADVOCATE AND/OR UTILIZE THE TOOLS OF TERRORISM, SUBVERSION AND VIOLENCE. THIS HAS LEFT THE BUREAU FOR THE MOST PART, IN A POSITION TO RESPOND ONLY AFTER A BOMBING OR ASSASSINATION HAS BEEN PERPETRATED; TO BE REACTIVE RATHER THAN PROACTIVE. UNDER THE REQUESTED BUDGET, IN CONJUNCTION WITH NEW GUIDELINES, IT APPEARS THE BUREAU NOW HAS ADEQUATE RESOURCES AND AUTHORITY TO REMEDY THIS DEFICIENCY. HOWEVER, ONLY TIME WILL TELL.

SENATOR JEREMIAH DENTON's QUESTION

Q IN EXERCISING ITS OVERSIGHT RESPONSIBILITY, THE SUB-COMMITTEE ON SECURITY AND TERRORISM HAS SEVERAL TIMES RECEIVED TESTIMONY CONCERNING THE LACK OF PERMANENT AUTHORITY FOR UNDERCOVER OPERATIONS BY THE FBI AND THE PROBLEMS THIS PRESENTS. PLEASE GIVE THE DEPARTMENT'S VIEWS ON THIS ISSUE AND PRESENT DOJ'S RECOMMENDATIONS AS TO HOW TO REMEDY THIS SITUATION.

HAS THIS ALSO BEEN A PROBLEM FOR THE DEA? IF SO, PLEASE EXPLAIN IN WHAT WAY IT HAS BEEN A PROBLEM AND PRESENT DOJ'S REMEDIAL RECOMMENDATIONS.

A. Problems have developed in several areas when the Department's Authorization bill is not enacted in a timely manner or when a resolution extending the current Authorization is not enacted.

Current law prohibits the Government from engaging in certain activities which are considered necessary in the operation of a successful undercover investigation. For example, the FBI is prohibited from depositing in excess of $100,000 in a bank account, or using the proceeds of undercover operations to offset expenses. Other activities including the purchasing of real and personal property, leasing space, establishing or acquiring proprietary corporations or business entities also should have expressed Congressional approval. Authority to perform these functions is found in certain exemptions now written into our authorization legislation. Problems have developed when there are lapses between authorization bills. These lapses remove the authority to use the above techniques in an undercover operation. Any sudden change has the potential of seriously threatening the safety of the undercover Agent running the operation. For example, the inability to deposit in excess of $100,000 in a bank account immediately endangers and curtails undercover operations using "show money." Show money is used to establish credibility, financial stability, and business assets. We cannot open multiple bank accounts where show money exceeds $100,000 and appear normal.

Many undercover operations are operated as normal business entities. This requires the receipt of income and the disbursement of expenditures on a day-to-day basis in a normal fashion to maintain cover. Cash receipts are thus deposited in a bank account and expenditures are made from that account. During a hiatus in authorization bills, authority to use income

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to offset expenses lapses and there is considerable risk of exposure of the business cover. Informants and/or undercover Agents may be exposed and subjected to possible physical retaliation.

There is a considerable impact also on the Department's activities when the regular Authorization bill is not enacted in a timely manner.

For the last several years, for example, the Department has requested authorization to provide for the relocation of law enforcement employees and their families in emergency situations, primarily because of a threat to life.

We have also requested authority to contract for expert witnesses on the basis of demonstrated competence and qualifications not based entirely on price competition. The Department is placed at a decided disadvantage if it is not permitted to procure witnesses on the same basis as its oponents. Without authorization, we cannot act in these instances.

Also, we have requested exemptions in the Authorization bill which is essential to implementing the intent of Congress.

Title V of the Refugee Education Assistance Act of 1980 (Public Law 96-422), for example was added primarily to provide federal reimbursement for State and local government expenditure for Cuban and Haitian entrants. However, because of the way 501(e) of the Act defines Cuban and Haitian entrants, funds provided for this program could not be applied to Cuban and Haitian entrants who were under "final, nonappealable, and legally enforceable orders of deportation or exclusion." Since Cuba will not accept these individuals, language was necessary to authorize the Department of Justice to carry out the processing, care and maintenance activities associated with Title V for all Cuban and Haitian entrants notwithstanding the restricting clause. Congressional staff indicated that the Department's authorization bill was the proper vehicle for removing the restriction since the issue addressed the use of funds and general operational authorities. Since the authorization bill was not being considered in a timely manner in fiscal year 1983, the Department was required to find another legislative vehicle that would provide the proper relief.

Failure to enact an authorization bill in a timely manner certainly impacts on our activities. So much so, that the Department was forced also to seek a continuation of its Authorization within the Continuing Resolution for the Appropriation for FY 1983. In addition, the Department's Appropriation has been utilized in the past to seek many authorities identical to those in the regular Authorization bill. This has been done to protect the Department should the Authorization not be enacted in time.

Such a process always carries with it the possibility that an objection is rendered due to the House rules preventing us from including such necessary authorities in the appropriation. This would place the Department in a very difficult position.

We believe, it is critical that the Department be provided a reasonable expectation of continuity for its basic programs. The current authorization process does not provide this expectation. On the contrary, it has created an environment which makes planning and program implementation very difficult. Hence, we believe, there is a need for legislation which would take many basic, non-controversial authorities out of an annual authorization cycle and place them into permanent authority. The authorization legislation we are proposing this year will accomplish that.

Answers to Questions from Senator Biden

1. The Department of Justice, in its response to the GAO report, "Oversight and Uniformity of U.S. Attorney's Prosecutive Policies", has stated that the Law Enforcement Coordinating Committees (LECC) have begun to use cross-designation of Federal and State or local prosecutors in concurrent jurisdiction cases. In how many cases has cross-designation been used to date? For what types of crimes? How many cases have involved Federal prosecutors in local courts and how many have involved local prosecutors in Federal courts? What factors have been used to determine when cross-designation is appropriate? Have policies been established to ensure those factors are assessed on a relatively uniform basis?

A. Cross-designation of attorneys is an important element of the Law Enforcement Coordinating Committee program. Prior to this Administration, cross-designation had been used on only an occasional basis in a few districts. Now it is being used regularly and has been applied in nearly half the 93 federal judicial districts. Over one hundred state or local prosecutors have been designated as Special Assistant United States Attorneys in over 40 districts and over 35 federal prosecutors have been designated as state or local prosecutors.

Cross-designation is utilized where attorneys at one level of government have special expertise or knowledge of a case that is being prosecuted in the other jurisdiction. The extent of its usefulness varies from state to state, which is why some districts have used it and others have not.

Each prospective appointment is reviewed by both the United States Attorney involved and the Department of Justice to ensure that it is justified and proper.

2. The Department of Justice response to the GAO report also states that a function of the LECC's is to develop formal procedures for cooperation between Federal, State, and local prosecutorial and law enforcement agencies at the district level. How many LECC's have written these procedures? What do they entail?

A. One function of the Law Enforcement Coordinating Committees is to develop procedures for cooperation on concurrent jurisdiction offenses among federal, state, and local prosecutorial and investigative agencies within the district. This aspect of the LECC program is being actively developed. In some districts specific arrangements for particular offense areas, such as bank robbery or drug smuggling, have been developed and implemented. In others, overall procedures for cooperation, applicable to all offense areas, have been developed. These arrangements are recorded in the minutes of the meetings of the districts involved, and in the district federal law enforcement plans. Each of the district plans has a section on cooperation among federal, state, and local law enforcement. To date, plans have been received for review at the Department from 55 of the 93 districts, and 8 have been approved, with approval of several more expected very shortly.

3. To meet their goal of coordination of investigations and prosecution of concurrent jurisdictional crimes, the LECC's must involve cooperative participation by State and local prosecutors and investigators; yet the history of the relationship of the two levels of government in these areas suggests that this will be a formidable task. What measures have been taken to ensure full, meaningful participation of State and local officials on a sustained basis? What is the distribution between federal representation and State and local representation on the LECC's?

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A. It is recognized that both institutional and historical constraints must be overcome in order to achieve successful cooperation among law enforcement agencies at different levels of government. The first step that has been taken to overcome those constraints is the formation of the Law Enforcement Coordinating Committees. These committees constitute a unique effort to arrange for law enforcement officials with operational responsibility at the federal district, and county and city level to convene and identify in a systematic manner the crime situation and law enforcement problems that they jointly face. It is expected that simply by sitting down and formally identifying problems, and by discussing methods of dealing with them, a large measure of cooperation will be obtained. In many areas of the country communication at this level has not been a common occurrence. Of course, the precise approach to this cooperative effort will vary from district to district, depending in large part on the structure of law enforcement in the area and the history of law enforcement cooperation and coordination. In addition to the benefits of general meetings, specific projects have been embarked upon in many districts. We are in the process of gathering information on such projects in individual districts to share with all the districts.

In most of the Law Enforcement Coordinating Committees, state and local representatives equal or exceed the federal membership of the committee.

4. How are local representatives on the LECC's selected? Are other local agencies informed of who the representatives are? Are the local representatives given guidance to solicit the views of other local agencies?

A. United States Attorneys were given discretion to develop selection procedures for local representatives that best suited their particular district. In some instances, local law enforcement agency associations selected their own representatives. In other districts, particularly where there are a relatively small number of law enforcement agencies, such as a district predominantly made up a major metropolitan area, the local representation may consist of representatives of all the significant local law enforcement agencies in the district. In other locations, the United States Attorney found it necessary to make informed judgments, based on consultation with federal state and local law enforcement officials, as to the best selection to be made. In all instances, the United States Attorneys was directed to insure that there was full and fair representation of all local law enforcement interests, both police and prosecutorial, and urban, suburban and rural (to the extent that such geographical diversity exist in the district).

5. There is a potential danger that even with local input, the LECC's will represent strictly federal interests instead of joint Federal, State, and local interests. What measures are being taken by the department to insure that the LECC's are not strictly Federal in orientation?

A. There is always the potential that a Law Enforcement Coordinating Committee convened through the initiative of the United States Attorney, will focus on federal interest instead of joint federal, state, and local concerns. Through review of the minutes of the LECC meeting, through approval of the district federal law enforcement plans, and by providing channels of communication directly to the Department for local law enforcement officials with problems, every effort is being made to insure that the LECCs adhere to their intended purpose.

6. One area of emphasis of the LECC's appears to be the establishment and coordination of declination policies by the U.S. Attorneys. What has been the impact of such policies to date? Are there procedures in

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place to monitor or track what happens to the cases, declined by the U.S. Attorneys, at the local level? As the result of the LECC's efforts, have any cases, declined at the local level, been turned over to the federal level for completion of the investigation and for prosecution? What is the nature of these cases (i.e., drugs, white collar crime, public corruption)?

A. With respect to declination policies, the district federal law enforcement plan has a section on procedures for declined cases. The purpose of this section is to insure that a conscious decision is made on the fate of matters that are investigated by federal investigative agencies and considered for prosecution by federal prosecutors, but for which prosecution is ultimately foregone. The purpose of the plan section is to insure that a conscious decision is made in each case whether the matter should be referred to state or local law enforcement officials for their consideration. The section also is intended to ensure that procedures for making such referrals exist, where a decision is made that a referral should be made. All of this is designed to avoid matters falling between the cracks between federal and state jurisdiction. At the same time, it is important to note that this is not intended to produce a referral of all declined federal matters to state or local officials. Where declination is based on the weakness of the evidence, it is likely that state or local officials would have no more interest than federal officials in continuing to proceed with the particular matter. Proper declination and referral policies should result in only those those matters in which there is both prosecutive merit and a ligimate state and local interest being referred by federal officials, when for some other reason federal prosecution is not pursued.

7. What is the relationship between the LECC's and the District Drug Enforcement Coordination Groups, which have been established for the regional drug enforcement task forces? Are they coordinating their efforts in terms of the allocation of resources to be devoted to the drug enforcement efforts? Has the Department of Justice provided written guidance to the LECC's regarding such coordination?

A. The District Drug Enforcement Coordination Groups of the Organized Crime Drug Enforcement Task Force program have been directed to coordinate their effort with the Law Enforcement Coordinating Committees. This coordination is intended to cover both Task Force and non-Task Force drug enforcement matters. Since the Task Force program is just now deploying its resources, it is too early to determine the details of how the two programs will carry out their directions for cooperation.

8. Have any provisions been made to specifically assign staff to the LECC's? How many and what are their responsibilities?

A. The Department's supplemental budget submission is expected to contain a request for non-attorney staff to work on the administration of both the Law Enforcement Coordinating Committees and the Drug Task Forces. There would be one staff person for each United States Attorney's office.

9. Has the Department of Justice articulated any specific goals for the LECC's? For example, cooperative investigations on certain types of crime. What kinds of measures have been instituted to determine whether these goals have been met and the impact on the general nature of crime in the area?

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A. The goals of the Law Enforcement Coordinating Committees are to achieve cooperation and coordination in federal, state, and local law enforcement in each district in the United States. The specific kind of cooperation and coordination that will be needed in each district will vary significantly from one area of the country to another. Therefore, rather than attempting to develop a blueprint that would apply to each district, all the United States Attorneys have been directed to develop individual programs for each of their districts. They report on their individual programs through the minutes of their meetings, and the district plans. Through approval of the district plans and review of the minutes of the meeting and other information, we have begun to ascertain how the program is working. We would be glad to provide further information on the progress of this program as it becomes available.

JUVENILES

The CHAIRMAN. Let me go back just for a moment to two points. One is about the juveniles. Would there be a distinction, or a difference between a juvenile who goes from one State to another, and a juvenile who goes from one place to another in the same State? It seems to me that the latter is clearly within State jurisdiction. When they go from one State to another, would that be more grounds for the Federal Government to take some action, especially if they should be arrested and put in a Federal prison? They could segregate the new offenders, so to speak, who have not committed previous crimes from the hardened criminals who have.

Attorney General SMITH. Of course, to a certain extent, Mr. Chairman, it depends on what the crime is. But, generally speaking, the law enforcement activity is essentially a State and local activity. It is not a Federal function, with the obvious exception of violation of Federal law.

The CHAIRMAN. Is there any authority for the Federal Government to intervene in instances where these young people go from one State to another, for instance where girls engage in prostitution, and boys in crime? Is there any Federal jurisdiction at all in matters of that kind?

Of course, in kidnaping cases, when they do commit a crime and flee to another State, you have Federal jurisdiction. Is there any Federal law, or do you feel there is one needed on matters of this kind?

Attorney General SMITH. Of course, there are a number of Federal laws that deal with the subjects that you have just talked about, the Mann Act, and laws——

The CHAIRMAN. Taking females across State lines. Of course, the Mann Act would cover that. But I am speaking of young people who just flee from their homes and go from one State to another. Is there any Federal jurisdiction at all on that, or would there have to be some Federal crime committed before you would have jurisdiction?

Attorney General SMITH. It would turn on the kind of conduct that is engaged in. If what is committed was a violation of a Federal law, of course, it would be within Federal jurisdiction. If not, presumably, it would not be.

The CHAIRMAN. The reason I ask that is that so many young people are leaving home. They come from broken homes, or are unhappy at home, or feel dissatisfaction with their grades in school, or maybe are pregnant. You read in the newspaper yesterday about the girl who was pregnant and threw herself on the train tracks and killed herself.

I am just wondering if is there anything we could be doing at the Federal level, where we have proper jurisdiction to assist in this problem, because, with the roles we have today, with the transportation facilities we have today, and with the unrest we have today, it seems we may have an increase in this situation.

I wish you would give that some thought, and see if you feel there is anything that you would like to recommend along that line.

Attorney General SMITH. Fine. Be glad to do that, Mr. Chairman.

PRISON INDUSTRIES

The CHAIRMAN. The other matter is about the prisons. Going back to the time when I was Governor, I encouraged the prison authorities to set up vocational training down in the prisons to provide jobs. The manpower and the womanpower is just unlimited, and in my way of thinking, it ought to be used, and they ought to be self-sustaining.

We have all that labor free. What are we going to do with it? Can we arrange for these people that can be trusted to go out in the day and make money, and then come back to the prison at night? They could then pay the Federal Government the cost of keeping them there, and it would also allow them to support their families. For those who cannot be trusted, is there some way we can arrange to encourage private industries to build factories beside prisons that would give jobs to those people?

I just feel that we have got to do more than has been done in the past along the line of using prison labor. Not only that, if we can teach them a trade, when they get out they can make a living.

We can do two things. We can educate them and teach them a trade. Second, we can use their labor while they are there to help them be self-sustaining, and help their families.

If you would give a lot of thought to that, and contact the head of the prisons, and get the views maybe of people all over the country that are interested in this subject, maybe you want to suggest a bill to us along that line.

Attorney General SMITH. We will be glad to look into that, Mr. Chairman. As you know, at the Williamsburg Conference there was a certain amount of discussion on that subject. I think somebody proposed the possibility of having inmates work on items that are not, for one reason or another, being produced in this country competitively.

I think the example used was small radios, and things where we would not compete with the labor market, because one of the objections to this in the past years has come from labor unions, especially about competing with the general labor market.

The CHAIRMAN. I feel we have got to arrange to allow goods made in prisons to be sold in interstate commerce. That law is antiquated, because a lot of these people in prison can be rehabilitated. This gives them an opportunity, if we can sell those goods. If you would care to consider that, and make a recommendation along that line, we would appreciate it.

Attorney General SMITH. Fine. We would be glad to do that.

The CHAIRMAN. Mr. Attorney General, I think that completes the hearing.

I want to thank you for your presence, and the very helpful testimony you have given us. Any time that you feel that this committee can cooperate with you in your vast responsibilities, I hope you and the Justice Department will call upon us.

Attorney General SMITH. Thank you very much, Mr. Chairman. I appreciate that.

The CHAIRMAN. The hearing is now adjourned.

[Whereupon, at 11:35 a.m., the committee adjourned, subject to the call of the Chair.]

[The following was subsequently supplied for the record:]

Question. During the March 24, 1983 hearing Chairman Thurmond expressed his concern with the problem of runaway juveniles. The Chairman requested Department advice as to what could be done at the Federal level concerning the problem with runaways and asked for recommendations for legislation to address the problem.

Answer. The Department does not recommend any additional law enforcement legislation to assist in the location and/or apprehension of runaway juveniles. If the FBI or other Federal law enforcement agencies were to actively become involved in these cases, it would probably be along the lines of a Federal fugitive investigation. If so, the FBI would be faced with the responsibility of looking for and apprehending a juvenile for an offense for which the juvenile would not be Federally prosecuted. Further, after apprehension of the juvenile, the question is raised as to where to hold the juvenile until the parents or appropriate local or State law enforcement authorities can assume custody. Presently, jail facilities are not designed to segregate runaway juveniles from criminal offenders.

Currently, the FBI is actively involved in investigating matters where juveniles have been victimized. For example, the FBI conducts investigations pursuant to the Bureau's jurisdiction in certain parental kidnaping matters or pursuant to the Federal Kidnaping Statute, the White Slave Traffic Act, and the laws relating to the sexual exploitation of children. In addition, the FBI provides cooperative services to local and State law enforcement authorities which assist them in locating runaway juveniles. For example, the National Crime Information Center (NCIC) Missing Persons File provides law enforcement agencies with the capabilities of entering missing person records into the NCIC computer, providing the circumstances meet certain criteria. In certain cases, the FBI will permit guardians to enter the missing person information directly into NCIC. Further, as the result of the enactment of the Missing Children Act, the FBI's Identification Division will now accept fingerprint cards from criminal justice agencies relating to missing children. Therefore, if a new submission of a fingerprint card is matched to a card currently in the Indentification Division missing persons file, the contributor of the missing person's fingerprint card and the contributor of the new submission will be promptly notified. An open letter (attached) to all fingerprint contributors was mailed on March 18, 1983 advising of these new procedures.

Therefore, the Department does not recommend any new legislation to address the runaway juvenile problem as a law enforcement responsibility. Instead, we suggest that you consult the Department of Health and Human Services concerning possible non-law enforcement alternatives, such as family and psychological counseling to runaway juveniles or their families.

Question. During the March 24, 1983 hearing Chairman Thurmond asked if the Department had any recommendations relating to prison labor and job-oriented rehabilitation efforts.

Answer. The Department of Justice has under consideration a modification to Executive Order 11755, relating to prison labor which would allow federal agencies to contract with State institutions for State prison-made goods worth $10,000 or less. The impart of the proposed Executive Order would not be great and we are considering proposing legislation to amend the Walsh-Healy Act (41 U.S.C. § 35(d)) which prohibits convict labor in federal government contracts worth over $10,000. This would allow State prison industries a broader market and an opportunity to expand their operations to increase inmate employment.

Within the Federal Prison System, Federal Prison Industries, Inc. (FPI) operates an effective prison industry. Sales are made only to agencies of the federal government, which is a suitable market, and FPI has been self-sufficient since it was incorporated in 1934. A portion of its earnings are retained for future modernization and expansion of prison industries with the balance used to pay for vocational training and other benefits for the entire federal prison system population. At this time, adequately staffed by civilian tradesman and factory supervisors, and with a sufficient market, FPI does not need private industry to build and operate within its confines. FPI enlists the aid of private industry in developing its products, equipping its factories, and offering skill training.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20537

March 18, 1983

Letter to All Fingerprint Contributors

RE: FBI IDENTIFICATION DIVISION SERVICES

Dear Contributor:

MISSING CHILDREN ACT

On October 12, 1982, the President signed into law the Missing Children Act. This Act amends Title 18, United States Code, Section 534, to require the Attorney General to acquire and exchange information to assist Federal, state, and local officials in the identification of unidentified deceased individuals and in the location of missing persons (including unemancipated persons).

The FBI Identification Division (ID) previously discontinued processing missing person notices in 1980 as a result of privacy legislation and the availability of the National Crime Information Center's (NCIC) Missing Person File. In January 1974, the ID instituted a policy of returning unidentified deceased fingerprint cards to contributors since no identifications were being made after their initial search against the ID's fingerprint files. In order to conform with the provisions of the Missing Children Act, the ID has implemented the following procedures:

FINGERPRINT CARDS OF MISSING PERSONS

The ID will accept fingerprint cards from criminal justice agencies relating to children, i.e., those persons who have not reached the age of emancipation as defined by the laws of the place of residence of such persons, reported missing by such agencies, and the fingerprint cards of other missing persons meeting the criteria for entry in the NCIC Missing Person File. The criteria for entry in this file include: (1) A person of any age who is missing and under proven physical/mental disability or is senile, thereby subjecting himself/herself or others to personal and immediate danger; (2) a person of any age who is missing and in the company of another person under circumstances indicating that his/her physical safety is in danger; (3) a person of any age who is missing under circumstances indicating that the disappearance was not voluntary, i.e., abduction or kidnapping; and (4) a person who is missing and declared unemancipated as defined by the laws of his/her state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

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Upon receipt in the ID, the missing person fingerprint card will be classified and searched against the fingerprint records on file, including those in the Unidentified Deceased File. If no identification is made, an FBI number beginning with "MP" (designating the card as relating to a "Missing Person") will be assigned to the card. Those submissions identified with an already existing criminal record will be filed under the FBI number already assigned to that record, and the contributor will be furnished with a copy of that record and all other pertinent information. If a current submission is matched to a card in the ID's Missing Person File, the contributor of the missing person's fingerprint card and the contributor of the current submission will be promptly notified. The fingerprint card of a missing child will be removed from the Missing Person File and returned to the contributor when the child reaches the age of emancipation. Cards in file for those persons, other than an unemancipated child, who meet the criteria for entry into the NCIC Missing Person File will remain on file until the ID is notified that the card should be removed or the card is identified against a current submission.

The ID has received numerous inquiries from law enforcement agencies and representatives of organizations promoting the fingerprinting of children. Although some questions concerned fingerprinting techniques, most related to the issue of what to do with the completed fingerprint cards. The ID recommends that the child's parents or legal guardian retain the card until such time as it may be needed for identification purposes. At the time a child is reported missing, the child's parents or legal guardian should make the child's fingerprint card available to the law enforcement agency receiving the missing person report. That agency can make the appropriate entry in the NCIC Missing Person File and then submit the fingerprint card to the ID with a cover letter (attaching a copy of the incident report is acceptable), setting forth a summary of the incident and a current description of the missing child. The submitting law enforcement agency should clearly write the following information on the fingerprint card: (1) Agency name and Originating Agency Identifier (ORI) Number; (2) words "Missing Person" (followed by the applicable NCIC entry criteria number as set forth previously); and (3) NCIC record number received by the local agency in response to its entry in the NCIC Missing Person File.

The Missing Children Act has generated much publicity and many organizations throughout the United States have initiated programs involving the fingerprinting of children. Organizations taking part in these programs should make every effort to insure that legible fingerprints are obtained. The ID recommends that black printer's ink be used; however, chemical processes currently used by law enforcement agencies are acceptable provided the process was previously approved by the ID. All fingers should be fully rolled in the appropriate finger blocks. Fingerprint cards (Form 1-391) can be obtained from the Superintendent of Documents, United States Government Printing Office (GPO), Washington, D. C. 20402. This form is sold in lots of one hundred at a price of $12 per hundred. The GPO will accept telephone orders at telephone number (202) 275-2051, provided Master Card or VISA is used as the method of payment. Orders mailed to the GPO must be accompanied by a check or money order made payable to the Superintendent of Documents. Agencies should not use the standard FBI criminal (FD-249) or applicant (FD-258) fingerprint cards for

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the fingerprinting of children. Our supply of the standard "Personal Identification" card (FD-353) has been depleted. The ID can furnish one copy of the FD-353 and the agency can arrange to have this card printed at its own expense. The printer should reproduce the card format on seven mil card stock paper with the grain of the paper running left to right. Also, certain State Identification Bureaus have made state cards available for the fingerprinting of children. A sufficient supply of fingerprint cards should be available through one of the above sources.

FINGERPRINT CARDS OF UNIDENTIFIED DECEASED PERSONS

The ID will continue to accept the fingerprints of unidentified deceased persons. These prints should be submitted to the ID on the standard FBI criminal fingerprint card (FD-249). In many cases it is possible to secure legible fingerprints of a deceased person in the usual inking manner. In some instances, decomposition is so far advanced that the ridge detail is injured and it is not possible to secure fingerprints in a routine manner. When a problem arises in obtaining readable fingerprints, you are encouraged to contact the ID's Latent Fingerprint Section at telephone number (202) 324-2163, for expert assistance.

In order for the ID to conduct the most comprehensive fingerprint search possible, contributors must furnish all descriptive data available. If the deceased person is unknown, the "name" block on the front of the fingerprint card should read "John Doe," "Jane Doe," or "Unknown." Also, if the prints are of an unidentified deceased person, an approximate age should be filled in on the card in the "date of birth" block. The blocks designated for physical description, i.e., "sex," "race," "height," "weight," "eyes," and "hair," should be completed with as much detail as is obtainable, and the "charge" block should indicate "deceased."

Upon receipt in the ID, the fingerprint card will be searched through the Criminal File, Civil File, and Missing Person File. If the fingerprint card is not identified in any of the files, the contributor will be notified of that fact. The card will then be retained in the ID and will be purged from the file seven years after its receipt. If the fingerprint card is identified with a record, the contributor will be notified of the identity and furnished with any other pertinent information available. The deceased notice will be made a part of any existing record and the card will be retained in the ID for seven years and then purged.

Sincerely yours,

Nick F. Stames
Assistant Director
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